

49-16-602 Disability retirement -- Disability allowance eligibility -- Conversion to service retirement -- Examinations -- Reemployment.

- (1) A member of this system who applies and is qualified for disability retirement shall receive a disability retirement benefit until the earlier of:
 - (a) the date the member of this system no longer has a disability;
 - (b) the date the member of this system has accumulated 20 years of firefighter service credit, including years earned while the member of this system had a disability; or
 - (c) the date the member of this system has received disability retirement benefits for the following time periods:
 - (i) if the member is under age 60 on the date of disability, the disability retirement benefit is payable until age 65;
 - (ii) if the member is 60 or 61 years of age on the date of disability, the disability retirement benefit is payable for five years;
 - (iii) if the member is 62 or 63 years of age on the date of disability, the disability retirement benefit is payable for four years;
 - (iv) if the member is 64 or 65 years of age on the date of disability, the disability retirement benefit is payable for three years;
 - (v) if the member is 66, 67, or 68 years of age on the date of disability, the disability retirement benefit is payable for two years; and
 - (vi) if the member is 69 years of age or older on the date of disability, the disability retirement benefit is payable for one year.
- (2)
 - (a)
 - (i) The retiree with a disability shall receive service credit in this system during the period of disability.
 - (ii) If the retiree with a disability is employed by a participating employer during the period of disability, the retiree with a disability may not receive service credit for that employment.
 - (b) The disability retirement shall be converted to a service retirement at the time the disability retirement benefits terminate.
- (3) The office shall approve or disapprove applications for disability retirement benefits based upon:
 - (a) the evaluation and recommendations of one or more treating physicians along with medical records relating to the condition;
 - (b) the evaluation and recommendations of one or more independent physicians selected by the office; and
 - (c) receipt of documentation by the office from the participating employer that the member is mentally or physically unable to perform firefighter service.
- (4)
 - (a) A retiree with a disability who receives benefits under this section shall, upon request of the executive director, submit to a medical examination by one or more physicians as directed by the office.
 - (b) If, after an examination, the examiners report that the retiree with a disability is physically and mentally able and capable of resuming firefighter service employment, the retiree with a disability shall be reinstated by the participating employer for which the retiree with a disability last worked at the former classification and rank of the retiree with a disability, and the disability retirement benefit shall terminate.
 - (c) A retiree with a disability may not be required to submit to an examination under this Subsection (4) more than once every year.

- (d) A retiree with a disability who returns to firefighter service employment with a participating employer in this system shall immediately begin accruing service credit that shall be added to that service credit that has been previously accrued, including service credit while disabled.
- (5) A retiree with a disability is not subject to medical examinations after reaching age 55.
- (6) Refusal or neglect of a member to submit to an examination as requested by the office either before or after a decision regarding disability benefits has been made is sufficient cause for denial, suspension, or discontinuance of benefits and if the refusal or neglect continues for one year, the rights of the member or retiree with a disability to disability retirement benefits may be revoked by the office.
- (7)
 - (a) A retiree with a disability who receives benefits under this part shall file a sworn statement with the office on or before March 15 of each year for the first five years a retiree with a disability receives benefits.
 - (b) The sworn statement shall indicate whether or not the retiree with a disability engaged in any employment during the preceding year and, if so, the amount of earnings received during the calendar year.
 - (c) If the total amount received in one year by a retiree with a disability for disability retirement benefits and gross earnings from other employment exceeds 125% of the final average salary of the retiree with a disability, the office shall offset the disability retirement benefit paid the following year by the amount in excess of 125% of the final average salary of the retiree with a disability.
 - (d)
 - (i) If a retiree with a disability refuses or neglects to file a sworn statement as required under this Subsection (7), the executive director may suspend payment of any and all benefits pending receipt of the statement.
 - (ii) Upon filing the statement, the payments of the retiree with a disability shall be resumed.
- (8) The disability retirement benefit shall be improved by the annual cost-of-living increase factor applied to retirees of the system that covered the firefighter service employee at the time of disability.
- (9) A line of duty disability allowance paid on or after January 1, 2002, under Section 49-16-601 is exempt from taxation to the extent permitted under federal law.
- (10)
 - (a) An active member of this system with five or more years of firefighter service credit shall be eligible for a line-of-duty death or disability benefit resulting from heart disease, lung disease, or respiratory tract disease.
 - (b) An active member of this system who receives a line-of-duty disability benefit for more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract disease, and then returns to paid firefighter service, is not eligible for a line-of-duty death or disability benefit due to those diseases for two years after the member returned to paid firefighter service unless clear and convincing evidence is presented that the heart, lung, or respiratory tract disease was directly a result of firefighter service.
- (11) Disability retirement benefits shall be considered an allowance for purposes of Section 49-11-701.

Amended by Chapter 366, 2011 General Session